

January 25, 2018

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
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REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review file no. **E9900990**

SUSIE QUAN
Civil Penalty Waiver Appeal

Location: 20520 NE 85th Street, Redmond

Appellant: Susie Quan
represented by **John Comstock**
9 Lake Bellevue Drive Suite 105
Bellevue, WA 98005
Telephone: (425) 990-1501
Email: john@comstocklaw.com

King County: Department of Permitting and Environmental Review
represented by **LaDonna Whalen**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-5567
Email: ladonna.whalen@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant in part; modify penalties

EXAMINER PROCEEDINGS:

Hearing Opened:	January 23, 2018
Hearing Closed:	January 23, 2018

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

After hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

1. Pacific Sunset Properties, Ltd. is the record owner of parcel 052506-9040 in unincorporated King County in the RA-5-P zone (Property). Susie Quan is the governor of Pacific Sunset Properties, Ltd. Exhibit 3, page 5.
2. This matter began in 1999 when Code Enforcement Officer Garnett conducted a site visit in response to a complaint of construction being undertaken without permits and presence of junk and debris. Exhibit 1; testimony of Officer Whalen. Ultimately on May 13, 2003, the Department of Development and Environmental Services (now the Department Permitting and Environmental Review (DPER)) issued a Notice and Order alleging construction of several structures without the required permits and inspections in violation of cited provisions of the King County Code (KCC) (Violation 1) and the accumulation of inoperable vehicles and assorted other salvage and debris (Violation 2). Exhibit 6. Ms. Quan filed a timely appeal, which Hearing Examiner Smith ultimately dismissed with prejudice for lack of prosecution. See, July 19, 2004 Order Dismissing Appeal in DDES file number E9900990.
3. By certified letter dated May 23, 2017, DPER advised Ms. Quan of revised compliance deadlines, directing her to take the following actions:

As to Violation 1: (a) close all structures to entry by June 30, 2017; and (b) apply for and obtain the required permits, inspections, and approvals for these structures with complete application to be submitted by June 30, 2017; or (c) obtain a demolition permit, demolish the structures and remove all debris by June 30, 2017.

As to Violation 2: remove all scrap wood, construction materials, heavy and light equipment, wood pallets, commercial containers, inoperable vehicles, and assorted salvage and/or debris (collectively referred to in this decision as an inoperable vehicles and assorted debris) by June 30, 2017. Exhibit 7.

The compliance deadlines were highlighted in bold.
4. Upon questioning from the Examiner, Ms. Quan testified that she understood that the options for correcting Violation 1 were to either complete construction of the structures or to demolish them. Testimony of Susie Quan.
5. Ms. Quan obtained demolition permit DEM017-0059 for all of the structures relating to the enforcement case on June 22, 2017. Although the May 23, 2017 letter specified a compliance date of June 30, 2017, the face of the demolition permit states that it expires on June 22, 2018. Exhibit 3, page 3. Ms. Quan and her contractor, Brock McDowell, both

testified that they understood that they had one year to complete the demolition of the structures and removal of debris from the demolition.

6. Officer Whalen conducted an inspection on September 27, 2017, nearly three months after the revised compliance deadlines, discovering that the violations remained unresolved. Exhibit 1; Exhibit 4; testimony of Officer Whalen.
7. On September 29, 2017, DPER assessed civil penalties of \$10,050, calculated as follows:

Violation 1 (unpermitted structures): \$40 for first the 30 days (comprised of \$25 basic + \$15 public health risk); doubling to \$80 for the second 30 days.

Violation 2 (inoperable vehicles and assorted debris): \$70 for first the 30 days (comprised of \$25 basic + \$15 public health risk + \$15 environmental damage risk+ \$15 property damage risk); doubling to \$140 for the second 30 days.

Inspection fee: \$150. Exhibit 3, page 10.

The public health risk component of the penalty assessed for both violations is based on the fact that the Property is adjacent to a school and that the dilapidated state of the structures (depicted in Exhibit 4), inoperable vehicles, and assorted rubbish present a risk to children and others who might enter the Property. The environmental damage risk for Violation 2 is based on inoperable vehicles, which may leak oil and other fluids, being stored on non-impervious surfaces. The record does not reflect the basis for the property damage risk portion of the penalty for Violation 2.
8. On October 3, 2017, Ms. Quan timely filed a request for a waiver of the penalties, contending that the corrective work was now underway, the demolition permit would not expire until June 22, 2018, and DPER advised her that she had one year to complete the work. Exhibit 8. DPER denied the request. Exhibit 2.
9. Ms. Quan (Appellant) timely appealed the waiver denial, contending that she had now complied with the deadlines set forth in the May 23, 2017 letter at a cost of more than \$20,000 and that the penalties are excessive under the circumstances. Exhibit 3.
10. At the appeal hearing her counsel presented argument on issues not raised in her appeal statement, including a contention that Appellant had complied with the first option for correcting Violation 1 (close all structures and submit a complete permit application by June 30, 2017) and that the statute of limitations for assessing penalties had expired long prior to the assessment of the penalties. These matters are outside of the scope of the appeal; therefore, the Examiner does not consider them further. KCC 20.22.080.G; Hearing Examiner Rules of Procedure and Mediation, Rule IV.D.1.
11. Demolition permit DEM017-0059 received final inspection approval on December 18, 2017, resolving Violation 1. Exhibit 9. The scrap wood, construction materials, heavy and light equipment, wood pallets, commercial containers, inoperable vehicles, and assorted other salvage and/or debris has now been removed, resolving Violation 2. DPER issued a Compliance Certificate on January 3, 2018. Exhibit 9.

12. For purposes of assessing civil penalties, a violation is considered ongoing until the person responsible for code compliance has into compliance with the notice and order. KCC 23.32.030. Consequently, at the time DPER assessed the penalties, the violations were ongoing.
13. The burden is on the Appellant to demonstrate by a preponderance of the evidence that the civil penalties are erroneous or excessive under the circumstances. KCC 23.32.110. The Hearing Examiner may modify the civil penalties.
14. The preponderance of the evidence is that:
 - A. DPER took no action on the underlying violations from July 2004, when Hearing Examiner Smith dismissed the appeal of the Notice and Order, until May, 2017, when it sent a letter advising of the revised compliance deadlines.
 - B. Appellant obtained a demolition permit by the deadline established in the May 23, 2017 letter setting compliance deadlines. This permit relates to Violation 1.
 - C. Although the May 23, 2017 letter established a deadline of June 30, 2017 to complete demolition of non-permitted structures and removal of all demolition debris, the expiration date for the demolition permit is June 22, 2018. When the Appellant picked up the demolition permit, counter staff advised her that it was valid for one year.
 - D. Once DPER assessed the penalties, Ms. Quan completed the corrective work for both violations within a few months.
 - E. Other than aerial photographs, there is no evidence in the record that would tend to demonstrate that the inoperable vehicles and assorted debris pose a risk of property damage.
15. Under the circumstances, the penalties for Violation 1 are excessive and should be reduced by half from \$3,600 to \$1,800. Under the circumstances, the property damage risk component of the penalties for Violation 2 are excessive and should be eliminated, reducing the penalties for Violation 2 from \$6,300 to \$4,950.

DECISION:

The civil penalties are MODIFIED from a total of \$10,050 to \$6,900.

ORDERED January 25, 2018.



Alison Moss
Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

MINUTES OF THE JANUARY 23, 2018, HEARING IN THE APPEAL OF SUSIE QUAN, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. E9900990

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were LaDonna Whalen, John Comstock, Susie Quan, and Brock McDowell.

The following exhibits were offered and entered into the record:

- | | |
|---------------|--------------------------------------------------------------------------------------------------------------|
| Exhibit no. 1 | Department of Permitting and Environmental Review staff report to the Hearing Examiner for file no. E9900990 |
| Exhibit no. 2 | Letter from DPER to Susan Quan with civil penalty waiver request denial, dated November 9, 2017 |
| Exhibit no. 3 | Notice and statement of appeal, received November 27, 2017 |
| Exhibit no. 4 | Photographs of subject property, dated September 27, 2017 |
| Exhibit no. 5 | Aerial photographs of subject property, dated 2015, 2009, 2005, and 2002 |
| Exhibit no. 6 | Notice and order, issued May 13, 2003 |
| Exhibit no. 7 | Letter from DPER to Susie Quan with revised compliance deadlines, dated May 23, 2017 |
| Exhibit no. 8 | Civil penalty waiver request, received October 5, 2017 |
| Exhibit no. 9 | Compliance certificate, dated January 3, 2018 |

AM/ed

January 25, 2018

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **E9900990**

SUSIE QUAN
Civil Penalty Waiver Appeal

I, Elizabeth Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as **FIRST CLASS MAIL** in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED January 25, 2018.



Elizabeth Dop
Legislative Secretary

Breazeal, Jeri

Department of Permitting and Environmental Review

Comstock, John

Comstock Law Firm PLLC

Hardcopy

Deraitus, Elizabeth

Department of Permitting and Environmental Review

Lux, Sheryl

Department of Permitting and Environmental Review

McDowell, Brock

Hardcopy

Quan, Susie

Hardcopy

Whalen, LaDonna

Department of Permitting and Environmental Review

Williams, Toya

Department of Permitting and Environmental Review